

DECISION

**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

FILE: B-221057 **DATE:** November 20, 1985
MATTER OF: BURCO Systems Development

DIGEST:

Protest that contracting agency determined a small business concern's proposal technically unacceptable without referring the matter to the Small Business Administration under its certificate of competency (COC) procedures fails to state a valid basis for protest, since COC procedures do not apply to technical evaluations of proposals.

BURCO Systems Development protests the rejection of its proposal as being technically unacceptable under request for proposals No. 85-34 issued by the Equal Employment Opportunity Commission. BURCO, presumably a small business, states that it understands technical acceptability to be an issue of responsibility that should have been referred to the Small Business Administration (SBA) for review under SBA's certificate of competency (COC) procedures.

Technical acceptability is not an element of responsibility. Responsibility concerns whether an offeror has the minimum capacity to perform a proposed contract, and involves such factors as the offeror's financial resources, record of performance, organization, technical experience, skills, equipment and facilities. Federal Acquisition Regulation (FAR), 48 C.F.R. § 9-104 (1984); C.M.P. Corp., B-211371, Aug. 23, 1983, 83-2 CPD ¶ 238. A contracting agency's responsibility determination may be based on any available information. FAR, 48 C.F.R. § 9.105-1. Technical acceptability, on the other hand, concerns the evaluation of the technical merits of a proposal itself, based solely on the factors specified in the solicitation. See FAR, § 15.608 (Federal Acquisition Circular 84-5, December 1984); Anderson Engineering and Testing Co., B-208632, Jan. 31, 1983, 83-1 CPD ¶ 99.

BURCO is correct that if an agency finds a small business concern to be nonresponsible, the agency must refer the matter to the SBA for a conclusive determination of the concern's responsibility under SBA's COC procedures. 15 U.S.C. § 637(b)(7) (1982), as amended by the Small Business and Federal Procurement Competition Enhancement Act of 1984, § 401, Pub. Law No. 98-577, 98 Stat. 3066, 3079 (1984). An agency's determination that a small business concern's proposal is technically unacceptable, however, need not be referred to SBA, even if the evaluation included some typical responsibility factors. It is appropriate in a negotiated procurement to use responsibility factors as technical evaluation criteria, and so long as those factors provide an appropriate basis for comparing one proposal to another, the COC procedures are inapplicable. C.M.P., Inc., B-216508, Feb. 7, 1985, 85-1 CPD ¶ 156.

The protester does not allege that the evaluation of its proposal was based on inappropriate criteria. Therefore, the alleged failure of the agency to refer the technical unacceptability determination to SBA does not provide a valid basis for protest.

The protest is dismissed. See 4 C.F.R. § 21.3(f) (1985).



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